

1 the plea and waiver. *Second*, contrary to his contentions, Movant's sentence was not
2 unconstitutionally enhanced under *Johnson v. United States*, 135 S. Ct. 2551 (2015). In
3 *Johnson*, the Supreme Court considered language in the Armed Career Criminal Act
4 ("ACCA"). The Supreme Court examined the definition of "violent felony" and held that
5 a portion of that definition known as the "residual clause" is void for vagueness.
6 However, Movant was not sentenced under the residual clause of the violent felony
7 definition of the ACCA. Rather, he was sentenced pursuant to 18 U.S.C. § 3553 as
8 guided by the U.S. Sentencing Guidelines § 2L1.2. Reading the motion liberally, when it
9 was still an open question, Movant challenged the U.S. Sentencing Guidelines as
10 unconstitutionally vague based on the same reasoning as *Johnson*. However, since the
11 motion was filed, the Supreme Court has rejected the argument in *Beckles v. United*
12 *States*, 137 S. Ct. 886 (2017), holding that the federal Sentencing Guidelines are not
13 subject to vagueness challenges under the Due Process Clause.

14 Therefore, the motion is denied because: (1) Movant validly waived his right to
15 collateral attack; and (2) the motion is without merit.

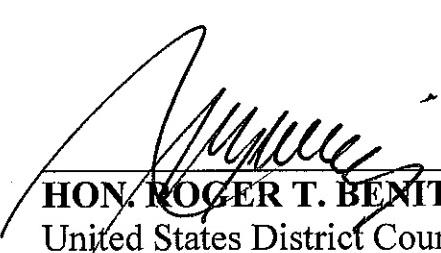
16 **CONCLUSION**

17 The Motion to Vacate, Set Aside or Correct Sentence is **DENIED**.

18 A court may issue a certificate of appealability where the movant has made a
19 "substantial showing of the denial of a constitutional right," and reasonable jurists could
20 debate whether the motion should have been resolved differently, or that the issues
21 presented deserve encouragement to proceed further. *See Miller-El v. Cockrell*, 537 U.S.
22 322, 335 (2003). This Court finds that Movant has not made the necessary showing. A
23 certificate of appealability is therefore **DENIED**.

24 **IT IS SO ORDERED.**

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26 Dated: 08/28/2019

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HON. ROGER T. BENITEZ
United States District Court Judge